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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:12-cv-00083-DGC
Internal Use Only**

TSI Incorporated v. Azbil BioVigilant Incorporated
Assigned to: Judge David G Campbell
Cause: 35:271 Patent Infringement

Date Filed: 01/13/2012
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

TSI Incorporated
a Minnesota corporation

Pat. # 6,831,279

represented by **Ahron David Cohen**
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V.

Defendant

Azbil BioVigilant Incorporated
a Delaware corporation

Date Filed	#	Docket Text
01/13/2012	 <u>1</u>	COMPLAINT. Filing fee received: \$350.00, receipt number PHX 0970-6273326, filed by TSI Incorporated (submitted by Ahron Cohen). (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet)(REK) (Entered: 01/13/2012)
01/13/2012	 <u>2</u>	SUMMONS Submitted by TSI Incorporated (submitted by Ahron Cohen). (Attachments: # <u>1</u> Summons)(REK) (Entered: 01/13/2012)
01/13/2012	 <u>3</u>	Corporate Disclosure Statement by TSI Incorporated identifying Corporate Parent JJF Group Incorporated, Corporate Parent Churchill Companies for TSI Incorporated (submitted by Ahron Cohen). (REK) (Entered: 01/13/2012)
01/13/2012	 <u>4</u>	Filing fee paid, receipt number PHX 0970-6273326. This case has been assigned to the Honorable David G. Campbell. All future pleadings or documents should bear the correct case number: CV 12-00083-PHX-DGC. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (REK) (Entered: 01/13/2012)
01/13/2012	 <u>5</u>	Summons Issued as to Azbil BioVigilant Incorporated. (Attachments: # <u>1</u> Summons Statutory Agent)(REK). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 01/13/2012)

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28 **UNITED STATES DISTRICT COURT**

DISTRICT OF ARIZONA

29 TSI, Incorporated, a Minnesota
30 corporation,

31 Plaintiff,

32 vs.

33 Azbil BioVigilant, Inc., a Delaware
34 corporation,

35 Defendant.

Civil No. _____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff TSI, Incorporated (“TSI”), for its Complaint against Defendant Azbil BioVigilant, Inc. (“BioVigilant”), formerly known as BioVigilant Systems, Inc., alleges as follows:

PARTIES

1. Plaintiff TSI is a corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 500 Cardigan Road, Shoreview, MN 55126.

2. On information and belief, Defendant BioVigilant is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 2005 W. Ruthrauff Road, Suite 151, Tucson, AZ 85705, and with its domestic address, as listed by the Arizona Corporation Commission, at 2015 W. Ruthrauff Road, No. 153, Tucson, AZ 85705.

3. BioVigilant is believed to have received significant funding from Alerion Capital Group, LLC, which is located in Scottsdale, AZ. One of BioVigilant’s directors also is listed with the Arizona Corporation Commission as having an address at Alerion Capital Group, LLC, in Scottsdale, AZ.

4. On information and belief, in or about 2009, Tokyo-based Yamatake Corporation of the azbil Group acquired a majority interest in BioVigilant and is currently the majority or sole owner of BioVigilant.

5. On January 5, 2012, BioVigilant announced that it changed its name from BioVigilant Systems, Inc. to Azbil BioVigilant, Inc. According to BioVigilant’s announcement, the change reflects the company’s alignment with its corporate parent, Yamatake Corporation of the azbil Group.

6. On information and belief, the azbil Group’s head office in the United States is in Phoenix, AZ, at 9033 N. 24th Ave., Suite 6, which is also the address of Azbil North America, Inc.

JURISDICTION AND VENUE

7. The claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over BioVigilant, because BioVigilant engages in continuous and systematic business activities in this district. On information and belief, BioVigilant has also made, sold, used, and/or offered to sell products in this district that are accused of infringing the patent-in-suit.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

PATENT-IN-SUIT

11. On December 14, 2004, United States Patent No. 6,831,279 (“the ‘279 patent”), entitled “Laser Diode-Excited Biological Particle Detection System,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘279 patent is attached as Exhibit A.

12. TSI owns the ‘279 patent, having acquired all right, title and interest from the initial assignee, Her Majesty the Queen in right of Canada, as represented by the Minister of National Defence (“Canada”), through an assignment from Canada. TSI’s rights to the ‘279 patent acquired from Canada include the rights to sue for past infringement and to all damages for past infringement of the ‘279 patent.

13. Before acquiring the ‘279 patent TSI licensed the ‘279 patent from Canada.

COMPLIANCE WITH 35 U.S.C. § 287

14. TSI makes and sells biological particle detection systems that are embodied by one or more claims of the ‘279 patent.

15. TSI has complied with 35 U.S.C. § 287(a) by marking its products with the ‘279 patent.

1 16. BioVigilant was also given actual notice of the '279 patent.

2 **CLAIM FOR RELIEF FOR PATENT INFRINGEMENT**

3 17. TSI realleges and incorporates by reference paragraphs 1 through 16 as if
4 fully stated herein.

5 18. BioVigilant has knowledge of the '279 patent.

6 19. BioVigilant and Yamatake Corporation (acting on behalf of BioVigilant)
7 have sought a license to the '279 patent from Canada and TSI. Yamatake Corporation
8 specifically sought a license to the '279 patent that would extend not only to BioVigilant,
9 but also to Yamatake Corporation and Azbil North America, Inc. TSI declined to grant
10 any license to BioVigilant, Yamatake Corporation, Azbil North America, Inc., or any
11 other affiliate and/or member of the azbil Group.

12 20. On information and belief, BioVigilant markets and sells biological particle
13 detection systems, including, for example, the IMD-A series (such as the IMD-A 200-1;
14 IMD-A 220-4; IMD-A 300; and IMD-A 350).

15 21. On information and belief, BioVigilant's biological particle detection
16 systems, including, for example, the IMD-A series (such as the IMD-A 200-1; IMD-A
17 220-4; IMD-A 300; and IMD-A 350), are covered by at least one claim of the '279 patent.

18 22. Accordingly, on information and belief, BioVigilant has infringed and is
19 directly infringing, actively inducing others to infringe, and/or contributing to the
20 infringement of the '279 patent by making, using, importing into the United States,
21 offering to sell, and/or selling biological particle detection systems, including, for
22 example, the IMD-A series (such as the IMD-A 200-1; IMD-A 220-4; IMD-A 300; and
23 IMD-A 350), in this district and elsewhere in the United States, in violation of 35 U.S.C.
24 § 271.

25 23. On information and belief, BioVigilant's infringement of the '279 patent has
26 been and will continue to be willful.

24. On information and belief, BioVigilant will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '279 patent unless and until BioVigilant is enjoined by this Court.

25. As a result, TSI will be damaged and will be irreparably injured unless and until BioVigilant's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TSI respectfully requests this Court:

A. To enter judgment that BioVigilant has infringed the '279 patent in violation of 35 U.S.C. § 271;

B. To enter judgment that BioVigilant's infringement of the '279 patent is willful.

C. To enter orders enjoining BioVigilant, and its respective officers, agents, servants, and employees, and attorneys, and all persons in active concert or participation with any of the foregoing, who receive actual notice by personal service or otherwise of the orders, from infringing the '279 patent in violation of 35 U.S.C. § 271;

D. To award TSI its damages in amounts sufficient to compensate it for BioVigilant's infringement of the '279 patent, including enhanced damages for willful infringement, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

E. To declare this case to be "exceptional" under 35 U.S.C. § 285 and to award TSI its attorneys' fees, expenses, and costs incurred in this action; and

F. To award TSI such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TSI respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

DATED this 12th day of January 2012.

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